Stamp Duties Consolidation Act 1999

Part 7: Section 79 - Conveyances and transfers of property between certain bodies corporate

This document should be read in conjunction with section 79 of the Stamp Duties Consolidation Act 1999.

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A more recent version of this manual is available.

Revenue
Cáin agus Custaim na hÉireann
Irish Tax and Customs

The information in this document is provided as a guide only and is not professional advice, including legal advice. It should not be assumed that the guidance is comprehensive or that it provides a definitive answer in every case.

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1. Introduction

Section 79 of the Stamp Duties Consolidation Act (SDCA) 1999 provides for a stamp duty exemption to apply on certain instruments that have the effect of conveying or transferring a beneficial interest in property between associated bodies corporate. The exemption is generally referred to as 'associated companies relief'.

The purpose of this document is to explain the operation of section 79.

2. Application of exemption

Subsection (1) provides that stamp duty will not be chargeable on any **instrument to which section 79 applies** (see Section 3 below) under, or by reference to, any of the following heads of charge in **Schedule 1** SDCA 1999:

- Conveyance or Transfer on sale of any stocks or marketable securities;
- Conveyance or Transfer on sale of a policy of insurance or a policy of life insurance where the risk to which the policy relates is located in the State;
- Conveyance or Transfer on sale of any property other than stocks or marketable securities or a policy of insurance or a policy of life insurance.

For the purposes of the section, the following instruments are treated as a conveyance or transfer on sale in accordance with **subsection (11)**:

- where a merger is effected under the summary approval procedure, the instrument is the resolution referred to in section 202(1)(a)(ii) Companies Act 2014;
- where a merger is effected by a High Court order confirming the merger under section 480(2) Companies Act 2014, the instrument is the High Court order;
- where a merger involves at least one Public Limited Company (PLC), the instrument is the order made under section 1144 Companies Act 2014.

The exemption applies to the assignment of an existing lease, because this is treated as a conveyance or transfer on sale under Schedule 1. The exemption does not apply to the creation of a lease as this comes under the "Lease" head of charge in Schedule 1, which is not provided for in subsection (1) of section 79.

Subsection (10) provides that the exemption is not permitted where a recognised intermediary transfers shares to a connected company where the acquisition of the shares was exempt from stamp duty under **section 75** SDCA 1999.

3. Instruments to which section 79 applies

Subsection (3) provides that **section 79 applies to any instrument** the effect of which was to convey or transfer a **beneficial interest** in property from one **body corporate** to another and at the time of the execution of the instrument the bodies in question were **associated**. The application of subsection (3) is considered further below.

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3.1 Conveyance or transfer of beneficial interest

The beneficial interest in the property must be transferred and not merely the legal ownership. The transferor must have the beneficial interest in the property and be in a position to deal with the property as it wishes.

A company ceases to be the beneficial owner of property when it enters into a binding contract to sell the property[1].

A company also ceases to have the beneficial interest in property when it is liquidated, as its assets are then held in trust for the benefit of its creditors.

Property that is subject to a receivership is vested in the receiver. A transfer of property by a receiver does not qualify for the exemption.

3.2 Meaning of "body corporate"

The exemption is available to a body corporate. The term "body corporate" is not defined for the purposes of the section. However, it is generally accepted that a body corporate is a body of persons having an existence and rights and duties distinct from the individual persons who form it. Such a body will have the following characteristics:

- a separate legal personality from its owners,
- it can sue, and be sued, in its own name,
- it has perpetual succession, i.e., its existence remains unaffected by the incapacity or death of its members,
- it can own and transfer property in its own right, and
- its members have rights to distributions in accordance with their membership interests and similar rights on a liquidation.

Subsection (9) provides that section 79 will apply, notwithstanding that a body corporate is incorporated outside the State, where such body corporate corresponds, under the law of the place where it is incorporated, to a body corporate which has an **ordinary share capital** within the meaning given in **subsection (3A)** (see Section 3.3 below). Revenue's view is that the word "corresponds" means more than merely 'similar to' or 'akin to' and should be interpreted as 'equivalent to'.

[1] Donegan D., Friel R., and Comyn A, *Irish Stamp Duty Law,* (Bloomsbury Professional, 2009), Chapter 1, 1.37.

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A body corporate includes:

- a Designated Activity Company (DAC);
- a PLC;
- a Limited Company;
- a foreign company that has the characteristics of a body corporate as outlined above;
- a corporation sole[2] (including a Minister of the Oireachtas acting in their capacity as Minister of their Department)[3];
- an industrial and provident society;
- a building society;
- an incorporated association.

3.3 How to determine whether bodies corporate are associated

Subsection (3) provides that bodies corporate are **associated** where:

- one body corporate is the beneficial owner of not less than 90% of the **ordinary share capital** of the other, or
- a third such body is the beneficial owner of not less than 90% of the **ordinary share capital** of each body corporate.

The ownership requirement may be met where the ordinary share capital is owned:

- directly,
- indirectly through another body corporate or other bodies corporate, or
- partly directly and partly through another body corporate or other bodies corporate.

Subsections (5) to (10) of section 9 of the Taxes Consolidation Act (TCA) 1997 are to be applied for the purposes of determining the amount of ordinary share capital of one company which is owned by another company where that other company does not directly own the share capital of the first company. Guidance on the application of these provisions is contained in Tax and Duty Manual Part 01-00-04 "Subsidiaries (Section 9 TCA 1997)".

[2] Interpretation Act 2005, section 18(c).

[3] Ministers and Secretaries Act 1924, section (2).

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Subsection (3A) provides that the term "ordinary share capital" refers to:

"… all the issued share capital (by whatever name called) of the body corporate, other than capital the holders of which have a right to a dividend at a fixed rate, but have no other right to share in the profits of the body corporate".

It is Revenue's view that the phrase "issued share capital (by whatever name called)" refers to different classes of shares, such as those with different voting rights, and does not extend to, for example, units or interests that might be issued by various types of entities such as investment undertakings or partnerships.

Subsection (4) provides that bodies corporate will not be associated for the purposes of section 79 **unless:**

- one body corporate was beneficially entitled to not less than 90% of profits available for distribution to shareholders of the other body corporate, **or** a third body corporate was beneficially entitled to not less than 90% of the profits of each of the other two bodies, and
- one body corporate was beneficially entitled to not less than 90% of any assets available to shareholders on a winding-up, **or** a third body was beneficially entitled to not less than 90% of the assets on a winding up of each of the other two bodies.

In accordance with **subsection (8),** the rules for determining the percentage entitlements of shareholders are contained in section 414 TCA 1997 (profits available for distribution) and section 415 TCA 1997 (assets available on liquidation).[4] The key requirements are detailed below:

- Ordinary share capital is all of a company's issued share capital, other than fixed-rate preference shares that give no other right to share in the company's profits;
- Shares are not treated as issued until they are registered in the company's register of members;
- Issued share capital refers to the nominal value rather than the actual value of the share capital;
- As the association test (in subsection (3)) requires the holding by one company of ordinary share capital of another company, the exemption may not be available to bodies corporate (whether Irish or foreign) that do not have a capital structure based on share capital, e.g., a company limited by guarantee.

To summarise, to be eligible to a stamp duty exemption on an instrument of transfer, one of the two bodies corporate involved in the transfer (whether the transferor or the transferee) must be:

[4] Further guidance on these rules are available in the Taxes Consolidation Act Notes for Guidance – Part 12.

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- the beneficial holder of at least 90% of the ordinary share capital of the other company,
- beneficially entitled to at least 90% of the profits available for distribution to the shareholders of the other company, **and**
- beneficially entitled to at least 90% of the assets that would be available to the shareholders of the other company on the notional liquidation of the other company.

In the alternative, in relation to each of the two companies involved in the transfer, a **third** body corporate must be:

- the beneficial holder of at least 90% of the ordinary share capital of both companies,
- beneficially entitled to at least 90% of the profits available for distribution to the shareholders of each of the companies involved in the transfer (whether transferor or transferee), **and**
- beneficially entitled to at least 90% of the assets that would be available to those shareholders on the notional liquidation of those two companies.

3.3.1 Bodies corporate with no share capital

A body corporate without a share capital structure may avail of the exemption where it is the parent of a group provided that it holds the required level of ordinary share capital of the second body corporate, i.e., 90%. For example, a company limited by guarantee does not have a share capital yet may directly own 100% of the ordinary share capital of three subsidiary companies. These four companies would all be associated to the appropriate threshold for the purposes of section 79.

3.3.2 Partnerships

A general or limited partnership in Ireland is not a body corporate as it does not have a separate legal personality distinct from its partners. However, Revenue accepts that Irish limited and general partnerships, and foreign partnerships which are similar in form and character to Irish limited and general partnerships, may be "looked through" for the purposes of establishing whether the required 90% threshold of association is met.

It should be noted that Revenue's acceptance of "looking through" a partnership is **only** for the purpose of the association test. The legislation specifically applies the exemption to transfers between bodies corporate only.

3.3.3 Examples

A number of examples to illustrate how to determine whether a body corporate is the beneficial holder of at least 90% of the ordinary share capital of another company or whether a third company is the beneficial holder of at least 90% of the ordinary share capital of both companies are set out below.

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Example 1

In Diagram 1 below, Alpha Ltd directly holds 90% of Bravo Ltd's issued share capital. Alpha Ltd and Bravo Ltd are therefore associated. However, Alpha Ltd and Charlie Ltd are not associated because Alpha Ltd holds only 10% of Charlie Ltd's issued share capital. Therefore, a transfer of property between Alpha Ltd and Charlie Ltd, or between Bravo Ltd and Charlie Ltd, would not qualify for the relief.

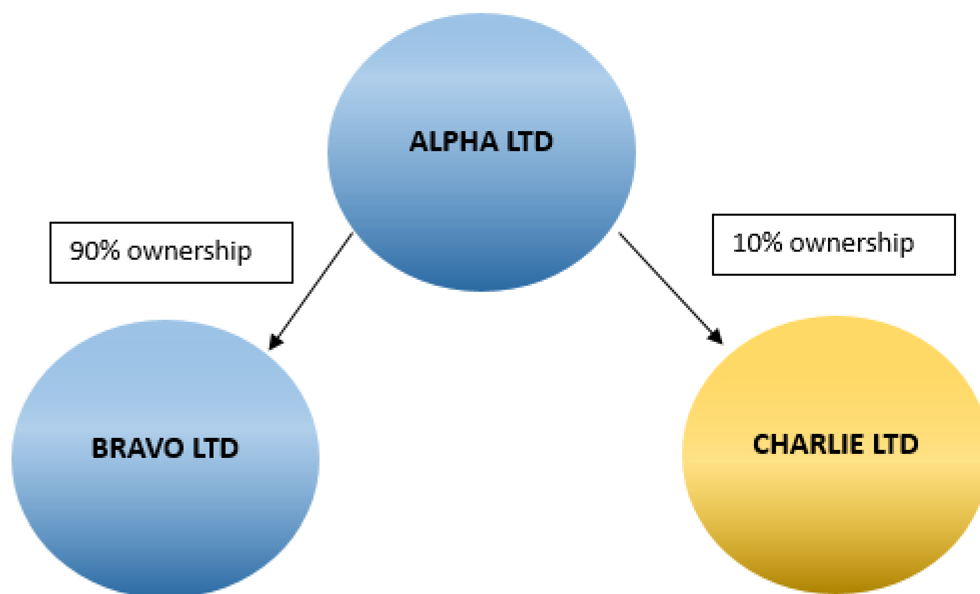

Diagram 1

However if, in Diagram 1 above, Bravo Ltd owned at least 88.9% of Charlie Ltd's issued share capital, Alpha Ltd would directly and indirectly own the required 90% of Charlie Ltd's issued share capital (i.e. 10% directly and 80% indirectly through Bravo Ltd (90% of 88.9%)). In that case, transfers of property between all three companies could avail of the relief.

Example 2

In Diagram 2 below, Alpha Ltd directly holds 100% of Bravo Ltd's issued share capital. Alpha Ltd and Bravo Ltd therefore satisfy the association test. Alpha Ltd also, indirectly through Bravo Ltd, holds 90% (i.e., 100% of 90%) of Charlie Ltd's issued share capital. Bravo Ltd also satisfies the association test in relation to Charlie Ltd. Therefore, transfers of property between all three companies could avail of the relief.

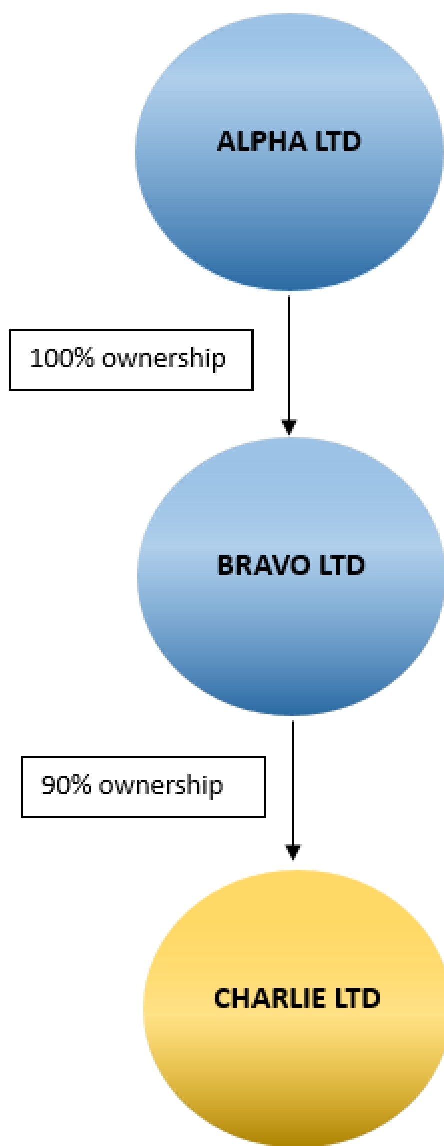

Diagram 2

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Example 3

Diagram 3 below shows subsidiaries of a common parent company.

Alpha Ltd, Bravo Ltd, Charlie Ltd and Delta Ltd satisfy the association test and transfers of property between them could avail of the relief. However, as Alpha Ltd holds only (indirectly through Delta Ltd) 80% of Echo Ltd's issued share capital, transfers of property between Echo Ltd and any of the other companies could not avail of the relief.

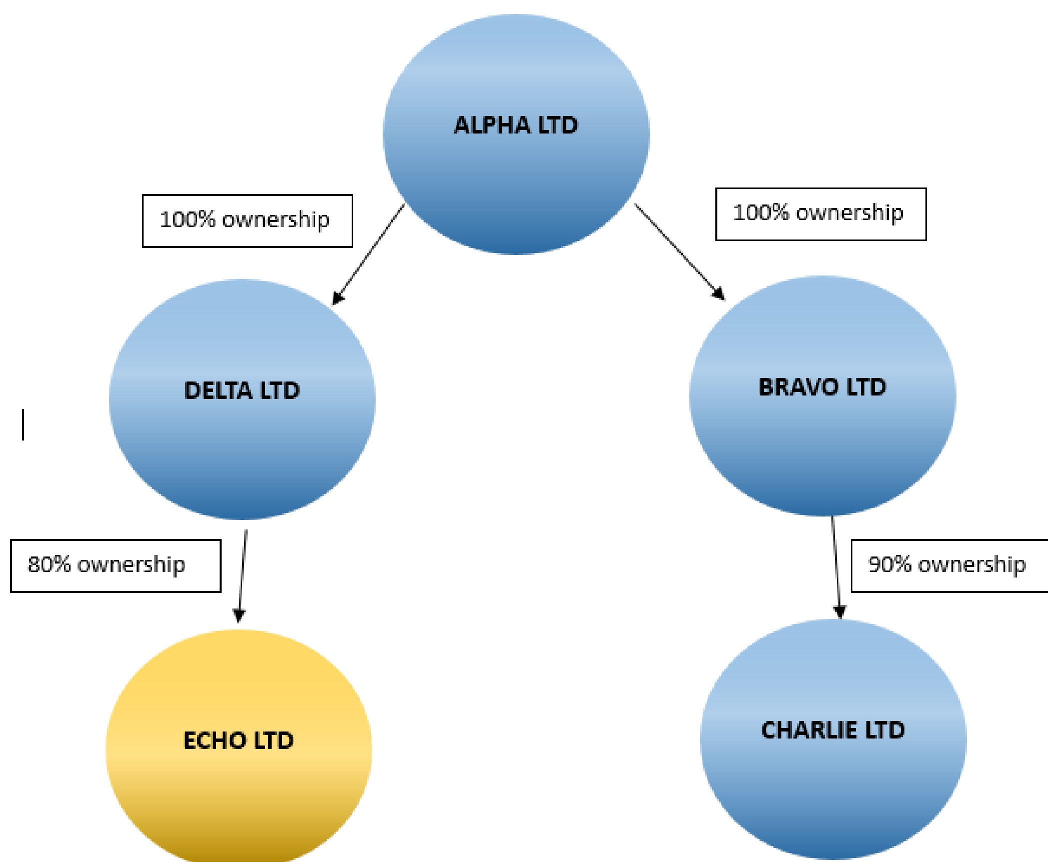

Diagram 3

However if, in Diagram 3 above, Charlie Ltd held 20% of the issued share capital of Echo Ltd, Alpha Ltd would indirectly hold 90% of the issued share capital of Echo Ltd (i.e., 80% indirectly through Delta Ltd and 18% (90% of 20%) indirectly through Charlie Ltd). In this case, transfers of property between all five companies could avail of the relief.

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4. Claiming the exemption

The exemption is claimed on a self-assessment basis where the qualifying conditions are satisfied. The claim is made on a stamp duty return that must be filed through Revenue's Online System (ROS). Supporting documentation should be retained for 6 years from the later of the date of the stamp duty return (or an amended return if relevant) or the date the stamp duty was paid. The supporting documentation may be requested by Revenue in the event of a compliance intervention.

5. Clawback of the exemption

Subsection (7) provides for the exemption to be clawed back where:

- it is subsequently found that an exemption was not properly due (see Section 5.1 below), or
- where the transferor and transferee cease to be associated (within the meaning of subsections (3) and (4)) within a period of 2 years of the date of execution of the instrument (see Section 5.2 below).

Information on how to notify Revenue that the exemption should be clawed back and on how to pay the stamp duty and interest is available here.

5.1 Exemption not properly due

Subsection (7) provides that the exemption is to be clawed back where any of the criteria set out under section 79 were not met at the time the relevant instrument was executed. As stamp duty is a self-assessed tax, the taxpayer must review a transaction and self-assess their eligibility for an exemption, including the exemption contained within section 79.

If it is discovered (for example, by way of a Revenue compliance intervention), that the exemption should not have been claimed, then the exemption will cease to be applicable and the relevant amount of stamp duty will be chargeable on the executed instrument, together with any interest calculated in accordance with section 159D SDCA 1999. **Interest will be calculated from the date of the conveyance or transfer** until the date the stamp duty is paid.

5.2 Transferor and transferee cease to be associated

Subsection (7) provides that the exemption will cease to apply if the transferor and transferee cease to be **associated** (within the meaning of subsections (3) and (4)) **within a period of 2 years of the date of execution of the instrument.**

Where a clawback arises, **interest is calculated from the date on which the association ceases** until the date that the duty is paid.

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The sale of the transferred property will not in itself trigger a clawback of the exemption (provided all other conditions continue to be met). It is only necessary that the association continues and it is not relevant that the transferor and transferee are associated by means of a different method to that used when the instrument was executed.

In certain circumstances, a clawback will not be triggered where the association between the transferee and transferor ceases, provided other conditions are met. These are considered in Section 5.3 below.

5.2.1 Example: new method of satisfying association test

Sierra Ltd owned 90% of the issued share capital of both Alpha Ltd and Bravo Ltd when an instrument was executed to transfer property from Alpha Ltd to Bravo Ltd. There was no direct association between Alpha Ltd and Bravo Ltd, both of whom satisfied the association test indirectly via Sierra Ltd. One year later, an unconnected company, Foxtrot Ltd, acquired all of the issued share capital of both Alpha Ltd and Bravo Ltd. Although the ownership of the share capital of both Alpha Ltd and Bravo Ltd had changed within 2 years, they continued to satisfy the 90% association requirement. A clawback of the exemption would not therefore be sought.

A clawback situation arises as soon as the required '90%' level of association ceases within the two year period. For example, a clawback situation arises where, although the level of the holding of a group company's issued share capital satisfied the '90%' requirement when the property was transferred, shares were subsequently sold to bring this level below 90%.

5.2.2 Example: clawback where association ceases within 2 years

Change in holding of issued share capital – direct holding

On 1 July 2018, Alpha Ltd held 100% of Bravo Ltd's issued share capital, and Bravo Limited executed an instrument which transferred commercial property to Alpha Ltd on that day. Alpha Ltd qualified for associated companies relief on the transfer under section 79 SDCA 1999. On 1 April 2019, when Alpha Ltd sold 40% of Bravo Ltd's issued share capital to Charlie Ltd, the required 90% association between Alpha Ltd and Bravo Ltd ceased. Bravo Ltd was not associated in any way with Charlie Ltd. As the required 90% level of association between companies Alpha Ltd and Bravo Ltd ceased within 2 years of the date the instrument of transfer was executed, a clawback of the exemption applies. Interest is calculated from the date that Bravo Ltd's issued share capital was sold to Charlie Ltd.

5.2.3 Example: clawback where association ceases within 2 years

Change in holding of issued share capital – indirect holding

Alpha Ltd holds 100% of Bravo Ltd's issued share capital and Bravo Ltd holds 90% of Charlie Ltd's issued share capital. The remaining 10% is held by Delta Ltd. Alpha Ltd therefore indirectly holds 90% of Charlie Ltd's issued share capital. A transfer of property from Alpha Ltd to Charlie Ltd qualified for associated companies relief on 1 July 2018. On 1 May 2019 (within 2 years), Bravo Ltd left the corporate group as Alpha Ltd sold its 100% shareholding in Bravo Ltd to an unconnected third party.

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While Charlie Ltd remains connected to Bravo Ltd to the 90% threshold, it is no longer connected to Alpha Ltd, and therefore a clawback of the exemption applies. Interest is calculated on the chargeable amount of stamp duty from the date Bravo Ltd's issued share capital was sold, as this was when the required 90% level of association ceased.

5.3 Exceptions to clawback where transferor and transferee cease to be associated

Subsection (7A), which was inserted by Finance Act 2017, provides that where a **transferor**:

- is **liquidated**, or
- **is dissolved without going into liquidation** and a conveyance or transfer has been effected as a result of a **merger by absorption** (within the meaning of section 463 or 1129 of the Companies Act 2014) by reason of which the foregoing dissolution of the transferor has taken place,

the association between the transferor and the transferee will be **deemed to be unbroken** provided that, for 2 years from the date of the conveyance or transfer, the following two conditions are met:

- the beneficial interest that was conveyed or transferred continues to be held by the transferee (**subsection (7A)(b)(i)**), and
- the beneficial ownership of the ordinary share capital of the transferee remains unchanged (**subsection (7A)(b)(ii)**).

A **merger by absorption** within the meaning of section 463 or 1129 of the Companies Act 2014 takes place where a company transfers all its assets and liabilities to its parent company. In this type of merger, property is transferred to the parent company which owns 100% of the transferor's ordinary share capital.

Revenue is prepared to accept that the treatment applying to a **liquidation** in subsection (7A) can also be applied where a transferor is wound up, dissolved or struck off the CRO register.

In addition, Revenue is prepared to accept that the treatment applying to a **merger by absorption** in subsection (7A) can also be applied to a **merger by acquisition.** A **merger by acquisition** takes place where a company acquires all the assets and liabilities of one or more companies in exchange for the issue of shares, with or without an additional payment.

In both types of merger, the transferor is automatically dissolved without going into liquidation. Revenue accepts that the transferred property that qualified for relief does not have to have been effected **as the result of** the merger (as stated in subsection (7A)) but can have been effected before the merger, provided the required level of association existed at the time the instrument was executed. An overall restructuring of a corporate group can comprise a series of interrelated mergers taking place in close succession.

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The relief will not be subject to clawback where the final 'net' outcome of such a series of mergers comes within scope of subsection (7A), provided the required level of association existed at the time each instrument was executed.

5.3.1 Alternative conditions

Revenue recognises that practical difficulties may be experienced in satisfying the two conditions in **subsection (7A)** for the 2-year period following the date of conveyance or transfer. Accordingly, where the two conditions are not satisfied for the required 2-year period, Revenue will **not** seek a clawback of the exemption provided one of the following **alternative conditions** is met:

(a) the transferred property is retained within the corporate group for the 2-year period following the transfer. When considering whether this alternative condition is available in a particular case, regard should be had for the illustrative examples set out in Section 5.3.2;

(b) the transferred property is transferred through multiple group companies but is still retained within the corporate group for at least 2 years **after the most recent transfer** in the series of transfers. This could happen, for example, where a company being transferred owns another company, that, in turn, owns another company, and so on, and where all these companies are subsequently liquidated. When considering whether this alternative condition is available in a particular case, regard should be had for the illustrative examples set out in Section 5.3.2;

(c) the transferred property comprises **book debts** which are paid off within the 2-year period following the transfer;

(d) the transferred property comprises **loans** which are paid off within the 2-year period following the transfer. This does not extend to loans that are waived, cancelled, forgiven or capitalised into shares;

(e) the transferred property comprises **redeemable shares** which are redeemed within the 2-year period following the transfer;

(f) in the case of a merger of a trade, the transferred property comprises **trading assets** such as stock and plant & equipment which are naturally utilised during the course of the trade within the 2-year period following the transfer;

(g) the transferred property comprises shares in a company that is liquidated or dissolved within the 2-year period following the transfer, resulting in the extinguishment of those shares. However, where the value of the shares was attributable to property held by the company at the time of transfer, that property must continue to be retained within the corporate group (unless one of the conditions set out in (c) to (e) above applies in relation to the property.

The alternative conditions set out in paragraphs (a) to (g) above also apply to liquidations and mergers governed by foreign law, where their effect is that the liquidated or dissolved company (whether transferor or transferee) ceases to have a legal existence, thereby causing the required association between the transferor and transferee to cease.

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5.3.2 Examples: exceptions to clawback where association ceases

The examples below focus on the required level of association between the transferor and transferee. It is assumed that any other qualifying conditions for the relief have been satisfied.

Example 1: Winding up of transferor – property retained by transferee

On 1 August 2018, associated companies relief was claimed on the execution of an instrument transferring property to Oscar Ltd from its 90% subsidiary Tango Ltd. Following the transfer, Oscar Ltd had no further use for Tango Ltd and arranged for its winding-up and dissolution in February 2019 (within the 2-year period following the transfer of the property).

To avoid a clawback of the relief, Oscar Ltd (not being part of a corporate group) must continue to hold the transferred property and its shareholders must remain unchanged until 31 July 2020. The avoidance of a clawback also depends on the winding-up being effected for bona fide commercial reasons and not being part of a scheme or arrangement for the avoidance of tax or duty, which is the anti-avoidance provision set out in **subsection (7B).** This example relates to the legislative requirements set out in **subsection (7A)** and none of the alternative conditions set out in 7.3.1 above.

The same treatment would apply where the transferee was liquidated or was involuntarily struck off the CRO register. This relates to the extension of the scope of **subsection (7A)** as set out in 7.3 above.

Example 2: Merger by absorption of transferor – property retained by transferee

Romeo Ltd owns 100% of Juliet Ltd and they are the only companies in their corporate group. Following a merger by the absorption of Juliet Ltd by Romeo Ltd, Juliet Ltd is automatically dissolved without going into liquidation. The merger was affected by the summary approval procedure and the date of the instrument of transfer (i.e., the resolution referred to in section 202 (1)(a)(ii) Companies Act 2014 was 1 October 2018).

A clawback of the associated companies relief will not apply as long as the assets of Juliet Ltd continue to be held by Romeo Ltd, whose shareholders must remain unchanged, until 30 September 2020. This example relates to the legislative requirements set out in **subsection (7A)** and none of the alternative conditions set out in 7.3.1 above.

6. Anti-avoidance provisions

Subsection (5) and **subsection (7B)** provide that the transfer of property or the subsequent liquidation of the transferor:

- must not form part of a scheme or arrangement for the avoidance of tax or duty, and
- must be carried out for *bona fide* commercial reasons.

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Furthermore, the exemption does not apply where the instrument was executed in pursuance of, or in connection with, an arrangement where:

- any of the consideration for the transfer was to be provided or received, directly or indirectly, by a third party that it is not associated with either the transferor or transferee unless it was borrowed from a financial institution as part of an independent commercial transaction;
- the beneficial interest was previously conveyed or transferred, directly or indirectly, by a third party that it is not associated with either the transferor or transferee; or
- the transferor and transferee were to cease to be associated (other than in a situation specified in Section 5.3 of this manual).

7. Liquidation, winding-up, dissolution, strike-off terminology

7.1.1 Companies incorporated in Ireland

Property may cease to be owned by a company, or an association between group companies may cease, when a company is:

- liquidated/wound up,
- dissolved, or
- struck off.

It is necessary to understand the meaning of these terms and their consequences, because **subsection (7A)** was inserted to provide an exception to the association requirement when a transferor is **liquidated**. Some of the above terms are used interchangeably but may not have precisely the same meaning. A **company ceases to have a legal existence** upon being dissolved or struck off the register of companies maintained by the Companies Registration Office (CRO). Visit www.cro.ie for guidance on the above-described situations, and how they are processed by the CRO.

The terms 'liquidation 'and 'winding-up' are often used interchangeably. Liquidation involves the ending of a company's business, payment of its debts and distribution of its assets. It is a way of winding-up a company. However, while a liquidator is appointed in the majority of winding-ups, this does not necessarily happen. The final stage of a liquidation or winding-up is the dissolution of a company.

The date on which a company is liquidated depends on the type of liquidation and will be one of the following dates:

- date of resolution of the members following the making of a declaration of solvency;
- date of resolution of the members ratified by the creditors; or
- date of Court order.

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In a winding-up without a liquidation, the date of winding-up should be taken as the date of the first step in the winding-up. This depends on the particular facts and circumstances but could be, for example, the date of the decision to wind-up, documented in the relevant minutes of a company meeting.

The CRO maintains a register of companies. Companies can be struck off this register, voluntarily or involuntarily.

- Voluntary strike-off may happen, for example, with dormant and unwanted companies within a group to avoid contingent costs and responsibilities.
- Voluntary strike-off is a simpler and less expensive process than liquidation.
- Involuntary strike off may happen, for example,
  (i) where the CRO takes action because of non-compliance with its requirements,
  (ii) where no liquidator is acting in a winding-up or
  (iii) where a liquidator has not submitted the required post-liquidation documentation.

The date on which notice of a company's strike-off is published in the CRO Gazette is the date on which the company is dissolved.

7.1.2 Companies incorporated outside Ireland

The procedures described above in relation to companies incorporated in Ireland - liquidation, winding-up, strike-off and dissolution - may be similar in other countries in which a company may be incorporated but may not have precisely the same meaning. How a company incorporated outside Ireland ceases to have a legal existence depends on the law of the country of incorporation. As with a company incorporated in Ireland, once a company incorporated outside Ireland ceases to have a legal existence, any association (within the meaning of section 79) between it and another body corporate ceases.

8. Revenue compliance interventions

In a Revenue compliance intervention following the claiming of the exemption, Revenue will seek evidence that **all** of the qualifying conditions in section 79, or the accepted practices as outlined in this document have been satisfied. Failure to meet **any** of the conditions means that the relief was not properly claimed on the return. Revenue will seek supporting documentation, including a group schematic of the various companies, to verify that they meet the '90%' association test.

The appendix to this manual contains a summary checklist of the qualifying conditions for the relief. A company claiming the relief must be in a position to answer 'yes' to every question on the checklist.

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Appendix – checklist of qualifying conditions

Section 79 Relevant subsection	Qualifying conditions	If the answer to any question is 'No', the relief does not apply
(1)	Is the conveyance or transfer on sale or by way of a gift?	Yes/No
(3)	Is the effect of the instrument to convey or transfer a beneficial interest in property?	Yes/No
(3), (9)	• Is the effect of the instrument to convey or transfer that beneficial interest from one body corporate to another? Tick the type of body corporate involved: Transferor • Designated Activity Company (DAC) • Public Limited Company (PLC) • Limited Company • A Corporation Sole (e.g. A Minister) • Unlimited Company • Industrial and provident society • Building society • Incorporated association • Foreign body corporate Transferee • Designated Activity Company (DAC) • Public Limited Company (PLC) • Limited Company • A Corporation Sole (e.g. A Minister) • Unlimited Company • Industrial and provident society • Building society	Yes/No

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	• Incorporated association • Foreign body corporate	
(3), (9)	Do the bodies corporate who are party to the transaction have all the following characteristics? • a separate legal identity from its owners • capacity to sue, and be sued, in its own name • perpetual succession; i.e. its existence remains unaffected by the incapacity or death of its members • capacity to own and transfer property in its own right • the members have rights to distributions in accordance with their membership interests and similar rights on a liquidation.	Yes/No
(3), (3A)	At the time (immediately before) the instrument was executed were the transferor and transferee associated in one of the following ways - tick the relevant association: • one body corporate was the beneficial owner of at least 90% of the other body corporate's ordinary share capital, or • a third body corporate was the beneficial owner of at least 90% of both the transferor's and the transferee's ordinary share capital. Note: section 108B SDCA 1999 deems NAMA to be an associated company in certain circumstances. Note: beneficial ownership may be - • direct, • through another body corporate or other bodies corporate, or	Yes/No

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	• partly directly and partly indirectly through another body corporate or other bodies corporate.	
(4)	At the time the instrument was executed, did valuable rights in relation to entitlement to dividends and entitlement to assets on a winding-up attach to the shares of the associated companies: • was one body corporate beneficially entitled to not less than 90% of any profits available for distribution (being profits available for distribution as defined in section 414 TCA 1997) to the shareholders of the other body corporate, or was a third body corporate beneficially entitled to not less than 90% of any profits available for distribution to the shareholders of the transferor and the transferee, and • was one body corporate beneficially entitled to not less than 90% of any assets of the other body corporate available for distribution (being assets available for distribution as defined in section 415 TCA 1997) to its shareholders on a winding-up, or was a third body corporate beneficially entitled to not less than 90% of any assets available for distribution to the shareholders of the transferor and the transferee on a winding-up? Note: Beneficial entitlement may be - • direct, • through another body corporate or other bodies corporate, or • partly directly and partly through another body corporate or other bodies corporate.	Yes/No

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(5)	7. Are you satisfied that the instrument was not executed under an arrangement whereby- • the consideration (or any part of it) was to be provided or received directly or indirectly by an unassociated company, or • the beneficial interest in the property was previously conveyed or transferred by an unassociated company, or • the transferor or transferee were to cease to be associated. Note: The scope of the expression "arrangement" includes the involvement of a non-associated company in the transaction. However, the relief should not be denied where the consideration (or any part of it) is borrowed from a financial institution as part of an independent commercial transaction.	Yes/No
(10)	Are you satisfied that the relief is not ruled out because a preceding transfer of some or all of the shares was exempted from stamp duty under section 75 SDCA 1999 (approved recognised intermediaries trading in Irish securities).	Yes/No
(7A)	If the transferor was liquidated or dissolved (due to a merger by absorption) within 2 years from the date the instrument was executed, were the following conditions satisfied: • the beneficial interest transferred continues to be held by the transferee, and • the beneficial ownership of the ordinary shares of the transferee remains unchanged.	Yes/No
S79 TDM	If a transferor was liquidated, or dissolved due to a merger by absorption OR a merger by acquisition, and the requirements in point 7 are not satisfied, are any of the alternative conditions satisfied per the s79 TDM in section 5.3.1?	Yes/No

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